

1
2
3
4
5
6
7 **UNITED STATES DISTRICT COURT**
8 **CENTRAL DISTRICT OF CALIFORNIA**
9 **WESTERN DIVISION**
10

11 **ARABIEL AVELAR** and
12 **RUDECINDA GUARDADO,**

13 Plaintiffs,

14 v.

15 Los Angeles County, Rocio Pleitez,
16 Iris Gonzalez, Mireya Figueroa,
17 Gary Roberts, Nahid Rimi, Jose Parada,
18 Jose Pereira, Susana Martinez,
19 Agustin Martinez, Peyanca Armstrong,
20 Esperanza Lopez, Jacqueline Rodriguez,

21 Ms. Learner (PSA/LCSW Counsel),

22 Los Angeles Unified School District,
23 LAUSD Principal Ms. Yehudian,
24 LAUSD Teacher Ms. Portman, and

25 Optimist Youth Home and Family Services
26 (named as Optimist Foster Family Agency),

27 Defendants.
28

Case No. LA CV 16-00471-VBF-AGR

ORDER

Overruling Defendants' Objections and
Adopting the Report & Recommendation:

Granting Documents 129, 137, and 170:
Dismissing Claims Against All Moving
Defendants Without Prejudice;

Denying Without Prejudice #177 and #182
(Motions to Dismiss for Non-Prosecution
& Failure to Comply With Court Orders);

Permitting Plaintiffs to File a Fourth
Amended Complaint By August 31, 2018
& Warning that Case May Be Dismissed
With Prejudice if They Fail to File a
Timely 4AC that States a Claim

25 The Court reviewed the August 30, 2017 Third Amended Complaint ("TAC")
26 CM/ECF Document ("Doc") 37; the Fed. R. Civ. P. 12(b)(6) motion to dismiss filed by
27 defendants L.A. County and L.A. County Department of Children and Family Services
28

1 employees Armstrong, Figueroa, Gonzalez, Martinez, Parada, Pereira, Pleitez, Rimi, Roberts,
2 and Rodriguez (Doc 129), plaintiffs' opposition (Doc 135), and defendants' reply (Doc 136).

3 The Court next reviewed the Fed. R. Civ. P. 12(b)(6) motion to dismiss filed by Los
4 Angeles Unified School District ("LAUSD") and LAUSD Principal Yehudian on November
5 2, 2017 (Doc 137), to which plaintiffs never responded. The Court also reviewed the Fed.
6 R. Civ. P. 12(b)(6) motion to dismiss filed by Optimist Youth Home and Family Services on
7 November 13, 2017 (Doc 170), to which plaintiffs also never responded.

8 In addition to motions arguing that plaintiffs failed to state a claim, the Court
9 reviewed the County/DCFS Defendants' February 8, 2018 motion to dismiss the action due
10 to plaintiffs' failure to prosecute the action and failure to comply with court orders (Doc
11 177), plaintiff's opposition (Doc 180), and the County's reply (Doc 181); as well as
12 LAUSD/Yehudian's March 27, 2018 motion to dismiss the action due to failure to prosecute
13 the action and comply with court orders (Doc 182), to which plaintiffs never responded.

14 Finally, the Court has reviewed the Magistrate Judge's June 13, 2018 Report and
15 Recommendation ("R&R") (Doc 186), County/DCFS Defendants' June 27, 2018 objection
16 (Doc 193), and the applicable law. Plaintiffs did not file their own objections to the R&R,
17 nor did they respond to the County/DCFS objections, within the time allotted by Fed. R. Civ.
18 P. 72(b)(2). **As required by Fed. R. Civ. P. 72(b)(3), the Court has engaged in de novo**
19 **review of the portions of the R&R to which defendants have specifically objected and**
20 **finds no defect of law, fact, or logic in the R&R, see *Rael v. Foulk*, 2015 WL 4111295, *1**
21 **(C.D. Cal. July 7, 2015), *COA den.*, No. 15-56205 (9th Cir. Feb. 18, 2016).**

22 The Court finds discussion of the objections to be unnecessary. The Magistrates Act
23 'merely requires the district judge to make a de novo determination of those portions of the
24 report or specified proposed findings or recommendation to which objection is made.'" It
25 does not require the district judge to provide a written explanation of the reasons for rejecting
26 objections. *See MacKenzie v. Calif. AG*, 2016 WL 5339566, *1 (C.D. Cal. Sept. 21, 2016)
27 (quoting *US v. Bayer AG*, 639 F. App'x 164, 168-69 (4th Cir. 2016) (per curiam)).

28 Accordingly, the Court will accept the Magistrate Judge's factual findings and legal

1 conclusions and implement her recommendations.

3 ORDER

4 The County Defendants' objection [Doc # 193] is **OVERRULED**.

5 The Report and Recommendation [Doc # 186] is **ADOPTED**.

6 County Defendants' Fed. R. Civ. P. 12(b)(6) motion to dismiss [Doc #129] is
7 **GRANTED, and the TAC's claims against them are DISMISSED without prejudice.**

8 LAUSD/Yehudian's unopposed Fed. R. Civ. P. 12(b)(6) motion to dismiss [Doc #
9 137] is **GRANTED, and TAC's claims against them are DISMISSED without prejudice.**

10 Optimist's unopposed Fed. R. Civ. P. 12(b)(6) motion [Doc # 170] is **GRANTED,**
11 **and the TAC's claims against Optimist are DISMISSED without prejudice.**

12
13 County Defendants' motion to dismiss the action due to plaintiffs' failure to prosecute
14 and failure to comply with court orders [Doc #177] is **DENIED without prejudice.**

15 LAUSD/Yehudian's motion to dismiss the action due to plaintiffs' failure to prosecute
16 and failure to comply with court orders [Doc #182] is **DENIED without prejudice.**

17
18 No later than Friday, August 31, 2018, plaintiffs MAY FILE a Fourth Amended
19 Complaint ("4AC") that rectifies the deficiencies identified by the R&R.

20 If plaintiffs fail to file a timely 4AC, the Court may dismiss the action *with* prejudice
21 for failure to prosecute, without further opportunity for objection or argument.

22 If plaintiffs file a timely 4AC that does not rectify the deficiencies, the Court may then
23 dismiss the action *with* prejudice for failure to state a claim on which relief could be granted.

24 IT IS SO ORDERED.

25
26 Dated: July 30, 2018



27 Hon. Valerie Baker Fairbank
28 Senior United States District Judge